

REMARKS/ARGUMENTS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Independent claims 1 and 10 have been amended to incorporate the oil concentrations recited in claims 3 and 5. New claims 11 and 12 find support at page 8 in the Table listing 40% light mineral oil under Example 4. New independent claim 13 recites a method for conditioning hair based upon the formulations of claim 10.

Claims 1, 3 and 5-10 were rejected under 35 U.S.C. § 103(a) as unpatentable over EP 0 546 235 by itself or in view of Merianos et al. (U.S. Patent 4,155,994). Applicants traverse this rejection.

EP '235 describes a hair restorer intended to stop hair loss or even stimulate hair re-growth. Applicants' claim 13 recites a method for conditioning hair which is quite distinct from stopping hair loss or stimulating hair re-growth.

EP '235 reports a formula based on a set of vegetable oils with the additional presence of glycerol and paraffin oil. The latter is described as a "vaseline oil" or "liquid paraffin". See page 5, third paragraph. Paraffin oils are materials of relatively high molecular weight. These are not light hydrocarbons with relatively low viscosities (e.g. ranging from 0.0001 to 0.5 Pa.s).

The hydrocarbon oil component of the present invention is claimed to be at least 20% of the hair oil. EP '235 provides no specific concentration, other than in the Example. Therein the amount of "paraffin" is 1/6 parts by volume. This amounts to less than 20% hydrocarbon. It is outside applicants' claimed range.

U.S. '994 was cited for disclosing a hair cream containing Drake Oil #7, identified as "mineral oil". Applicants note that there is no disclosure that Drake Oil #7 is "light" and would meet the relatively low viscosity range presently claimed for element (ii). Secondly, Example 8 is referred to as a "Hair Cream". This is not a Hair Oil. Furthermore, the claim term "consisting essentially of" would eliminate any significant amount of water. Example 8 has 16% water thereby being a significant functional liquefying component of that composition. Water would be outside the present claims.

A combination of EP '235 in view of U.S. '994 would not render the instant invention obvious. Neither of these references discloses a relatively non-viscous hydrocarbon lying within the viscosity range of 0.0001 to 0.5 Pa.s. In fact, EP '235 discloses a relatively viscous hydrocarbon in the form of paraffin oil. Amounts of this oil are disclosed to be substantially less than the 20% lower claimed limit. U.S. '994 would not be combined with EP '235 by those skilled in the art. Example 8 of U.S. '994 is an aqueous emulsion. This contrasts with the non-aqueous systems of EP '235. Those skilled in the art would not mix these technologies. Neither would there be any incentive for those seeking to improve EP '235 to specifically select mineral oil or even high levels of mineral oil for use with a non-aqueous system. For all these reasons the combination of art would not render the instant invention obvious.

Claims 1, 3 and 5-10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Urko (U.S. Patent 6,149,610) in view of Chubinsky (U.S. Patent 5,843,005) in further view of XP-002180877. Applicants traverse this rejection.

Urko was cited for teaching massage techniques and massage oils. By contrast, the present invention is concerned with treatment of hair. The technologies are non-analogous.

The Examiner cites a massage oil which contains 30 grams vegetable oil and 20 grams liquid paraffin. Attention is drawn to column 8 (line 31). Paraffin oils are relatively viscous hydrocarbons. These oils are not the relatively low viscosity liquids falling within the claimed range of 0.0001 to 0.5 Pa.s.

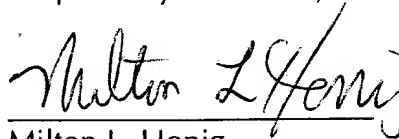
Applicants' claim 13 focusing upon a method for conditioning hair is also distinct from this reference. Urko states that her invention relates to an alternative solution to surgical removal of face defects. See column 1, lines 8-10. Anyone skilled in the art seeking a solution to conditioning hair would certainly not refer to this patent. Applicants note that independent claims 1 and 13 also recite a hair composition in the preamble. This preamble is intended to have "life and meaning" with respect to use of the composition on hair.

Chubinsky was cited for teaching a device for deep tissue massage and ionic therapy. This reference is also non-analogous art to that of conditioning hair. Anyone skilled in the art would not consider any teachings concerning massage as useful or appropriate to apply on hair for conditioning purposes. Furthermore, amounts are not disclosed of the various lubricants listed at column 6 (lines 53-56).

XP discloses a cosmetic formula with a "silky" after-feel apparently suggested as a "massage oil". This reference would not lead those skilled in the art to use this formula for hair conditioning purposes. It is non-analogous art. Furthermore, the amount of vegetable oils (avocado, sesame and coconut oils) amount to only 15% of the formula. Applicants' independent claims require at least 20% of a vegetable oil.

A combination of Urko in view of Chubinsky and XP would not render the instant invention obvious. All of these references focus upon massage oil rather than a hair conditioner. Since the term "hair" in the composition claims and method are essential elements, a combination of references would not render the claims even prima facie obvious. Furthermore, massage oils are non-analogous art to the present invention. Those skilled in formulating hair conditioners would not look toward massage oil technology. Still further, Urko and Chubinsky do not disclose low viscosity hydrocarbons. The paraffin and mineral oils are not likely to meet the claimed viscosity range of 0.0001 to 0.5 Pa.s. XP reference is deficient by not disclosing at least 20% of a vegetable oil either singly or in any combination. For all of the aforementioned reasons, a combination of the art would not render the instant invention obvious.

Respectfully submitted,



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